upon the charge of consorting but convicted appellants 2, 3, 4 and 5 upon this charge himself. For the reasons which have already been fully set out in the judgment of this Court in *Goh Ah Yew v. Public Prosecutor*[11] which immediately preceded this appeal, we find that this was an illegality and the purported conviction by the learned Judge of the appellants on this charge cannot stand.

Had this last defect in the proceedings stood alone we would have considered the question whether a retrial should be ordered, but in view of the fact that the prosecution put in and relied upon the inadmissible statements of the appellants to the police it appears to us that without these statements it was thought that there would be insufficient evidence upon which to convict and we are of opinion that this is not a case in which a retrial should be granted.

In view of our decision that the conviction in respect of the charges of consorting cannot stand it is not strictly necessary for us to deal with the further question whether a charge of consorting is one which should be joined with the capital charge under Regulation 4(1) of the Emergency Regulations, 1948. We think it right, however, to indicate our view that the evidence admissible upon a charge of consorting is so much wider in range than that which would be admissible on the simpler issue of carrying or possession of an arm or ammunition that the effect of joining a charge in respect of this lesser offence is likely to have the effect of prejudicing the minds of the Assessors in regard to the capital charge. We are of opinion, therefore, that a charge of consorting should not as a general rule be joined with a capital charge.

The convictions of appellants 2, 3, 4 and 5 are quashed. The conviction of appellant No. 1 upon the charge of possession of ammunition is upheld and the sentence confirmed.

Appeal of first appellant dismissed; appeal of second, third, fourth and fifth appellants allowed.

MOK CHOON v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Willan, C.J., Laville and Spenser-Wilkinson, JJ.) June 2, 1949]

[F.M. — Criminal Appeal No. 56 of 1949]

Emergency Regulations, Regulation 4(1)(b) — Statement of accused to Police Officer — Accused questioned on subject of crime for which he was taken into custody — Admissibility of statement.

The appellant in this case was charged with and convicted of being in possession of 6 rounds of 12 bore shot-gun ammunition, an offence contrary to Regulation 4(1)(b) of the Emergency Regulations, 1948. The only evidence against the appellant was a statement made by him to an Inspector of Police. It appeared that the statement was made by the appellant in answer to a question whether he admitted being in possession of the ammunition.

Held, (1) that the appellant, who was under arrest upon a charge of being in possession of ammunition, should not have been questioned about the charge; (2) that the statement was wrongly admitted in evidence and the conviction must be quashed.

Cases referred to:—

(1) *Cheng Seng Heng & 4 Others v. Public Prosecutor* (1949) M.L.J. 175.

(2) *Rex v. Treacy* (1944) 2 A.E.R. 229.

CRIMINAL APPEAL.

T. T. Bok for the Appellant.

F. C. Cooke for the Respondent.

Willan, C. J.: — In this case the appellant was charged with being in possession of 6 rounds of 12 bore shot-gun ammunition, an offence contrary to Regulation 4(1)(b) of the Emergency Regulations 1948.

Shortly, the facts are that in the early morning of the 28th December, 1948, at about 3 a.m., a combined party of police and military went to a squatter's hut situated about 40 yards from the edge of an old mining pool. In the party was an Inspector of Police, Mohamed Pilus, who entered and searched that hut. Whilst doing so he heard noises of persons scrambling about from the direction of the pool. He shouted to them to stop and shots came from that direction. The combined party of police and military having returned the fire until all firing had ceased, called upon the unknown, and as yet unseen, persons to surrender. One Chinese did so and, on Inspector Mohamed Pilus examining the spot from which this Chinese had come, he found a tarpaulin spread on the ground on which there was clothing and equipment, and also 6 rounds of 12 bore shot-gun ammunition.

A cordon was thrown round the mining pool and at day-break a search made. Three persons were found hiding in the pool, including the appellant. The appellant was arrested. On the 31st of December 1948, after he had been under arrest from the 28th of December 1948, he was brought before Inspector Mohamed Pilus who, through a Chinese Interpreter, told the appellant that he was charged with being in possession of 6 rounds of 12 bore shot-gun ammunition. After informing the appellant of the charge the Inspector cautioned him in a statutory form of the

caution as it was then contained in Regulation 33 of the Emergency Regulations 1948 i.e. *before* it was amended on 10th January 1949, to permit of questions being asked by the police.

According to the evidence of Inspector Mohamed Pilus, the appellant was asked no questions and made the following statement voluntarily :—

> "I wish to admit possession of these 6 rounds of 12 bore cartridges. I dropped them somewhere under the coconut tree under which we slept. This was on the night of my arrest".

Since the appellant was convicted and sentenced to death on that statement alone — there was not a tittle of other evidence against him — we have gone very carefully into the evidence relating to the circumstances under which that statement was made.

It is clear when that statement was made there were present Inspector Mohamed Pilus, the Chinese Interpreter and the appellant — no one else.

The admissibility of the statement was attacked by the defence at the trial on two grounds :—

(a) That it was not voluntarily made because the appellant had been tortured by the police;

(b) That it was elicited by means of a question put by Inspector Mohamed Pilus.

With regard to (a) it was decided at the trial that the appellant had not been tortured by the police and we have no quarrel with that finding.

As regards (b) the Inspector's evidence was that he had the 6 rounds of ammunition in his hand and he showed them to the appellant merely for the purpose of explaining the charge to him; that he then cautioned the appellant in the proper statutory form; that he asked the appellant no questions; and that the appellant, not having been asked any questions, made the statement voluntarily admitting possession of the 6 rounds of ammunition.

On the other hand, the Chinese Interpreter, who was a prosecution witness, said that the statement of the appellant was made in answer to a question asking him whether he admitted being in possession of the ammunition.

The appellant's evidence was that the ammunition was produced to him; that he was asked the specific question as to whether he admitted possession of it and denied it. Thus his evidence that he was questioned corroborates that of the Chinese Interpreter and refutes that of the Inspector.

In deciding to admit the statement the learned trial Judge said he believed the evidence of the Inspector. He rejected the evidence of the Interpreter because "he did not impress him as a very intelligent witness".

The record does not show that the learned trial Judge ever considered the evidence of the appellant on this point.

We do not accept the reason given by the learned trial Judge for rejecting the evidence of the Chinese Interpreter on the question in issue. The issue was whether a question was or was not asked prior to the statement being made. That should have been decided on the credibility and not solely on the intelligence of a witness. The evidence of the Chinese Interpreter was corroborated by that of the appellant. Moreover, the Interpreter was the only witness in a position to know what was said in Chinese to the appellant. That being so we see no good grounds for rejecting his evidence, and the corroborative evidence of the appellant, in favour of that of the Inspector.

Accordingly, in our view the learned trial Judge should have decided that the appellant was questioned prior to his making the statement.

Having decided that, the next question to decide is whether the statement should have been admitted. In our opinion it should not, for the following reasons.

This Court has already decided in the case of *Cheng Seng Heng & 4 Others v. Public Prosecutor*[1], — a digest of that case appears in (1949) M.L.J. 67 — that on the form of caution as it was in Regulation 33 of the Emergency Regulations, 1948, prior to the amendment on the 10th January, 1949, we must be guided by English authorities regarding the admissibility in evidence of statements made to the police. The relevant English authorities consist of the Judges' Rules, to which reference was made in the case just cited, and the English decided cases.

Rule 3 of those Judges' Rules (see *Archbold's* Criminal Pleadings and Practice, 31st ed: p. 372) reads :—

> "Persons in custody should not be questioned without the usual caution first being administered".

In July 1930 the Judges in England explained that Rule (see Archbold, same page) in the following terms :—

> "Rule 3 is not intended to encourage or authorise the questioning or cross-examination of a person in custody, after he has been cautioned, on the subject of the crime for which he is in custody, and, long before this rule was formulated and since, it has been the practice for the Judge

not to allow any answer to a question so improperly put to be given in evidence; but in some cases it may be proper or necessary to put questions to a person in custody after the caution has been administered. For instance, a person arrested for a burglary may, before he is formally charged, say: 'I have hidden or thrown property away', and after caution he would properly be asked: 'where have you hidden or thrown it?' or a person, before he is formally charged as a habitual criminal, is properly asked to give an account of what he has done since he last came out of prison. Rule 3 is intended to apply to such cases and, so understood, is not in conflict with and does not qualify rule 7, which prohibits any question upon a voluntary statement except such as is necessary to clear up ambiguity".

The important words particularly applicable to the appeal now before us are those underlined, which read :—

"Rule 3 is not intended to.... authorise the questioning.... of a person in custody after he has been cautioned on the subject of the crime for which he is in custody".

In *R. v. Treacy*[2] the appellant was under arrest upon a charge of murder. After he had been cautioned he was questioned by the police on the subject of that murder. At pages 225 and 226 the Court of Criminal Appeal said :—

"The fact was that the accused was detained upon a charge of murder, and whoever was the senior officer at that police station ought to have seen that, being under arrest upon a charge of murder, no question was put to that man about the murder....".

Following the explanation of the Judges in England regarding Rule 3 of the Judges' Rules, and also following that decided case, we hold in the appeal before us that the appellant, who was under arrest upon a charge of being in possession of ammunition, should not have been questioned about that charge.

Accordingly his statement was wrongly admitted in evidence. Apart from that statement there was no other evidence against the appellant.

This appeal is allowed and the conviction and sentence quashed.

Appeal Allowed.

ABDUL AZIZ BIN JAAFAR v. PUBLIC PROSECUTOR.

[App. Cr. Juris. (Willan, C.J., Laville and Spenser-Wilkinson, JJ.) June 2, 1949]

[F.M. — Cr. App. No. 54 of 1949]

Emergency Legislation, Regulations 4(1)(a), (b) and (c) and 4(2) — Police Informer — Protection of.

In this case the appellant who was a Police Informer was convicted of being in possession of 9 rounds of ammunition, an offence contrary to Regulation 4(1)(b) of the Emergency Regulations, 1948. The ammunition was found by the police in the house of the appellant on his own information. He was put under arrest and was interrogated by a Police Inspector for about 2 hours without having been cautioned under Regulation 33. Before searching the appellant's house the Police Inspector warned the appellant that if anything else was found in his house he would get into trouble. Nothing else was found. The learned trial Judge left the Assessors with the impression that the words "without lawful authority" in Regulation 4(1)(b) mean simply "without a licence".

Held, (1) that the words "without lawful authority" in Regulation 4(1)(b) do not mean simply "without a licence" because if the legislature had intended that, they would have used the word "licence", or a cognate expression, as they have done in Regulation 4(1)(a). The words "lawful authority" in Regulation 4(1)(b) are not restricted to carrying or possessing ammunition with a licence only; (2) that there must be some legal protection for police informers; otherwise a police informer, who is used in a 'police trap' to obtain possession of ammunition from a person regarding whom the informer gave information to the police that such person was in possession of ammunition, would have no protection. It would appear reasonable that a police informer can be regarded as in possession of such ammunition either by "lawful authority" under Regulation 4(1)(b), or by exemption from the Officer in charge of the Police District, for whom he is acting as a police informer, under Regulation 4(2). If this is not so the police informer would have no legal defence and would have to rely solely on the fact that no prosecution would be brought in such a case. The danger of relying on that is exactly brought out in the present case; (3) that where the accused is a police informer, that is a person acting for, and with the authority of, the police, the Court should consider whether that fact was sufficient lawful authority for him to be in possession of ammunition when it was not disputed that he had obtained it by means of his enquiries as a police informer.

CRIMINAL COURT OF APPEAL.

P. J. D. Regester for the Appellant.

A. M. I. Austin for the Respondent.

Willan, C. J. : — In this case the appellant was convicted of being in possession of 9 rounds of ammunition, an offence contrary to Regulation 4(1) (b) of the Emergency Regulations, 1948.

The facts are that a police corporal met the appellant on the 8th of February, 1949, in a Chinese drinking shop at a place called Nenasik on the east coast of Pahang. The police corporal admitted that for six months prior to that date he had known that the appellant was a police informer.